

Message Text

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42

ORIGIN SCS-03

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FM SECSTATE WASHDC

TO AMEMBASSY MEXICO PRIORITY

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E.O. 11652:N/A

TAGS:CASC, MX

SUBJECT:OFFICIAL REPRESENTATIONS TO MEXICAN AUTHORITIES IN
CASES OF MALTREATMENT OF AMERICAN PRISONERS

REF: STATE 80101

FOR CONSUL GENERAL

1. DEPARTMENT HAS RECEIVED EMBASSY'S REVISION OF DRAFT
MESSAGE ON ABOVE SUBJECT. CHANGES HAVE IMPROVED DRAFT AND
WE WILL ISSUE IT IN AIRGRAM FORMAT TO ALL MEXICAN POSTS.
HOWEVER, IN VIEW OF RECENT EVENTS, WE PROPOSE TWO CHANGES:
1) FOR PARAGRAPH NO. 3 ON "REPORTING PROCEDURES," WE WOULD
DELETE ITEMIZATION OF REPORTING FORMAT AND REPLACE WITH
REFERENCE TO STATE A-3916 OF JUNE 6 WHICH ENCLOSED REVISED
FORMAT. 2) FOR PARAGRAPH NO. 4(D) ON "PRE-TRIAL DETENTION
LASTING OVER ONE YEAR," WE PROPOSE REVISION DISCUSSED
BELOW.

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2. OUR THINKING ON PROTESTING PROLONGED DETENTION WITHOUT
SENTENCING HAS CHANGED IN LIGHT OF DEPARTMENT'S INVESTIGA-
TION OF 15 CASES FOR CONGRESSIONAL HEARINGS. REVIEW OF LIC.
MENDOZA'S SUMMARIES OF 15 COURT RECORDS (INCLUDED AS TAB H

OF PRESENTATION MATERIAL POUCHED TO CONGEN SMITH JULY 22)
IS OF INTEREST. OF 15 CASES, SEVEN WERE SENTENCED AFTER

AVERAGE DETENTION TIME OF EXACTLY ONE YEAR. OTHER EIGHT
HAVE BEEN AWAITING COMPLETION OF TRIAL FOR AVERAGE OF
ABOUT 17 MONTHS. COURT RECORDS INDICATE THAT DELAYS WERE
PROBABLY DUE TO VARIOUS ACTIONS BY DEFENSE (PETITIONS,
APPEALS, RETRACTIONS OF STATEMENTS, ETC.) AS WELL AS TO
INACTION BY PROSECUTION AND JUDGE. HIGH TURNOVER IN
DEFENSE ATTORNEYS ALSO PROBABLE CONTRIBUTING FACTOR.
ACCORDING TO MENDOZA SUMMARIES, EACH OF 15 PRISONERS HAD
AVERAGE OF THREE SETS OF ATTORNEYS (DOUGLAS APPARENTLY HAD
NINE SETS OF ATTORNEYS DURING 18 MONTHS DETENTION)

3. RELATED ASPECT OF PROLONGED DETENTION IS FOUND IN
QUESTION NO. 9 OF LIC. MENDOZA'S "ANSWERS" MATERIAL SENT
TO EMBASSY BY AIRGRAM JULY 30. MENDOZA POINTED OUT THAT
CONSTITUTIONAL GUARANTEE OF SENTENCING WITHIN ONE YEAR
HAS BEEN CHANGED BY SUPREME COURT OF MEXICO TO FAVOR AC-
CUSED, I.E., IF IT IS IN BEST INTEREST OF ACCUSED TO PRO-
LONG TRIAL BEYOND ONE YEAR, JUDGE IS OBLIGED TO KEEP CASE
OPEN SO HE CAN CONTINUE RECEIVING EVIDENCE. MENDOZA
NOTES THIS PRIVILEGE IS USED FAIRLY FREQUENTLY BY
ACCUSED AND DEFENSE WHO PLAY FOR TIME IN HOPE OF TURN OF
EVENTS IN THEIR FAVOR OR WHO DO NOT WANT TO ACCELERATE
IMPRISONMENT WHICH WOULD BE MORE RIGOROUS THAN PREVENTIVE
DETENTION. SINCE DETAINEES IN DRUG CASES ARE VIRTUALLY
CERTAIN OF CONVICTION AND THEIR SENTENCES ARE RETROACTIVE
TO START OF DETENTION, THEY HAVE LITTLE TO LOSE BY STALL-
ING FOR TIME. KAREN HARRISON, FOR EXAMPLE, ADMITTED DELAY
OF HER TRIAL WAS AT ONE TIME LEGAL TACTIC (MEXICO 5985).

4. ABOVE CONSIDERATIONS INDICATE NEED FOR CAUTION IN
PROTESTING PROLONGED DETENTION. ALSO, WE NOW DOUBT UTILI-
TY OF SUBMITTING PERIODIC NOTES TO FOREIGN OFFICE ON THIS
SUBJECT. NOTING THAT EMBASSY HAS FREQUENTLY WRITTEN
DIRECTLY AND PRESUMABLY WITH SOME SUCCESS TO DISTRICT
COURT JUDGES ASKING FOR APPOINTMENT OF PUBLIC DEFENDER
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FOR SPECIFIC PRISONERS, WE WONDER IF SIMILAR PRACTICE IN
CASES OF PROLONGED DETENTION MIGHT NOT BE MORE EFFECTIVE
THAN NOTE TO FOREIGN OFFICE. INDIVIDUAL LETTERS TO JUDGE
WOULD PERMIT EMBASSY TO INTERVENE IN MORE TIMELY AND PER-
SUASIVE WAY THAN BY QUARTERLY NOTE FOR GROUP OF DETAINEES.
LETTERS MAY ALSO PERMIT EMBASSY TO EXPLORE ON LESS FORMAL
BASIS REASON FOR DELAY.

5. WHETHER OR NOT EMBASSY CONCURS IN LETTER-TO-JUDGE
APPROACH, WE BELIEVE EMBASSY SHOULD MAKE EFFORT TO DETER-
MINE REASON FOR DELAY BEFORE ACTING. PERHAPS THIS COULD
BE DONE BY INCLUDING QUESTIONS IN C/CCS-46 FORM LETTER TO

BE ANSWERED BY PRISONERS WANTING THEIR DETENTION PROTESTED
THESE COULD BE ALONG THE LINES OF: "1) DO YOU ATTRIBUTE
DELAY IN TRIAL PROCEEDINGS TO (CHECK AS APPROPRIATE) -

A) SLOWNESS OF PROSECUTOR; B) NEGLECT OF CASE BY JUDGE;
C) INCOMPETENCE OF DEFENSE ATTORNEY; D) ABSENCE OF DEFENSE
ATTORNEY; D) AWAITING ACTION ON APPEAL; F) MY OWN DEFENSE
TACTIC; OR G) OTHER? 2) PLEASE EXPLAIN BRIEFLY YOUR INDI-
CATED REASON FOR DELAY. EMBASSY SHOULD INSURE THAT PRIS-
ONERS ARE TO TAKE OPPORTUNITY TO EXPRESS THEMSELVES FREELY
ON THIS MATTER. THIS EFFORT TO PINPOINT REASON FOR DELAY
MAY BE HELPFUL TO EMBASSY IN TRYING TO MOVE CASE FORWARD
AND IT MAY SMOKE OUT ANY PRISONER WHO TRIES TO EMBARRASS
EMBASSY BY BEING INCLUDED IN PROTEST NOTE WHILE DELIBER-
ATELY DELAYING CASE. IF THERE IS POSSIBILITY THAT PRIS-
ONERS WOULD BE INHIBITED FROM ANSWERING PROPOSED QUESTIONS
ON A C/CCS-46 FORM LETTER (AS PRESENTLY WORDED) COLLECTED
THROUGH PRISON ADMINISTRATION, WE ASSUME LETTERS COULD BE
COLLECTED DIRECTLY BY CONSULAR OFFICERS DURING PRISON
VISITS.

6. ACTION REQUESTED: EMBASSY'S COMMENTS ON LETTER-TO-
JUDGE APPROACH TO DETENTIONS OF MORE THAN ONE YEAR AND ON
REVISION OF C/CCS-46. IF EMBASSY BELIEVES LETTER TO JUDGE
FEASIBLE, PLEASE SUBMIT NEW 4(D) SECTION FOR SUBJECT
AIRGRAM UNDER REVISED HEADING OF "DETENTION OF MORE THAN
ONE YEAR WITHOUT COMPLETION OF TRIAL." IN THIS CONNECTION,
WE SHOULD ALL AVOID USE OF TERM "PRE-TRIAL" WHICH IS
AMBIGUOUS AND PERHAPS MISLEADING IN MEXICAN CONTEXT SINCE
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TRIAL PERIOD BEGINS WHEN FORMAL DETENTION ORDER IS ISSUED
BY JUDGE, USUALLY WITHIN WEEK OF ARREST. KISSINGER

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